

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

M & S PARTNERS,

Plaintiff

v.

Civil Action No. 2:04-1221

SCOTTSDALE INSURANCE COMPANY,
an Ohio corporation,

Defendant

MEMORANDUM OPINION AND ORDER

Pending are (1) plaintiff's motion to reconsider and amend the court's January 4, 2007, memorandum opinion, filed January 22, 2007, and (2) defendant's motion for leave to file a motion for summary judgment pursuant to Rule 56(b), or, alternatively, for entry of summary judgment in its favor, filed January 5, 2007.

The court does not revisit its discussion of the facts and procedural posture contained in the January 4, 2007, memorandum opinion. Having reviewed plaintiff's motion, the requested modification is unwarranted. As noted in the January 4, 2007, memorandum opinion, "[t]he basis for the default judgment order was Sandcastle's breach of the Financing Agreements." (Memo. Op. at 12). The motion to reconsider is not responsive to the court's analysis concerning the overarching effect of the pretrial order in this regard or the analysis of

the amended pleading that preceded it. In sum, the court exhaustively addressed each and every argument raised by plaintiff at summary judgment and none of the present contentions warrant a contrary result. The court, accordingly, ORDERS that plaintiff's motion to reconsider be, and it hereby is, denied.

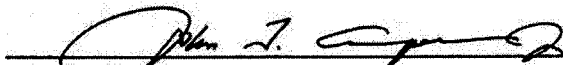
Regarding defendant's request for entry of judgment in its favor, the court notes the following representation from plaintiff in its motion to reconsider:

To the extent that the Court has based the denial on the legal premise that M&S neither established (through the default judgment) nor even pursued (as evidenced by the pretrial order) a claim that Sandcastle committed an act of negligence that would trigger coverage under the Errors and Omissions Extension of the CGL Policy, M&S questions the accuracy of these conclusions but does not contest the propriety of the Court entering judgment in Scottsdale's favor thereupon.

(Mot. to Reconsid. at 3 n.1). Based upon the analysis contained in the January 4, 2007, memorandum opinion, the court ORDERS that defendant's motion be, and it hereby is, granted insofar as it seeks entry of judgment in its favor. The court further ORDERS that this action be, and it hereby is, dismissed and stricken from the docket.

The Clerk is directed to forward copies of this written opinion and order to all counsel of record.

DATED: January 24, 2007


John T. Copenhaver, Jr.
United States District Judge